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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,352	09/29/2000	Tony A. Craft	SP00-295	1123

22928 7590 03/28/2003

CORNING INCORPORATED
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EXAMINER
HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
1731	15

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/675,352	Applicant(s) CRAFT ET AL.
	Examiner John Hoffmann	Art Unit 1731

-- The MAILING DATE of this communication appears on th cover she t with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 March 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10,12-17 and 19-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10, 12-17 and 19-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-11-03 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10, 12-17 and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In paper 11 it is argued that the Office interpreted "temperature profile" incorrectly. But there is no evidence or explanation as to how one of ordinary skill would interpret the term. The Office has made the argument that the "temperature profile" refers to a portion of the furnace - because it would not be reasonable to interpret it as referring to the total furnace. Specifically, if one was to make the draw furnace somewhat longer or shorter than the heating furnace and thus one would easily avoid infringement of the claims - because one temperature profile would be

substantially longer or shorter than the other profile - therefore such would be unreasonably narrow. It is Examiner's position that the "profile" need only be a part of the furnace - and any other interpretation would be unreasonable. Applicant has not set forth how one can otherwise avoid an unreasonable interpretation. One of ordinary skill would be unable to determine what is meant by the claim

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 10, 13-17, 19, 21-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of copending Application No. 09/522220. Although the conflicting claims are not identical, they are not patentably distinct from each other because one would interpret the melting off step as being the same as the allowing the gob to drop step. As to the specific taper ratio - such would have been on obvious matter of routine experimentation to determine the "optimized" tip as per claim 26 of the 09/522,220 application.

As to identical profiles, it would have been obvious that one could find one portion of each furnace with substantially identical temperature profiles, for example where there is a temperature gradient from 500 to 505. (See the above rejection under 35 USC 112, second paragraph).

As to the with temperature limitations: it would have been an obvious matter of routine experimentation to determine the appropriate temperatures - depending upon the glass composition used. It is noted that Applicant has not demonstrated any criticality or unexpected results.

As to claims 20-21: It would have been obvious to have multiple fiber operations set up so that one can make multiple amounts of fiber.

Claim 21 does not indicate where the apparatuses are. It would have been obvious that there are many more draw apparatuses in the world than pregobbing apparatuses because drawing of fibers have been going on for decades, but pregobbing is relatively new.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 12 and 20 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of copending Application No. 09/522,220 in view of Blankenship 5059229 or Lysson 5897681.

Lysson and Blankenship are superior drawing methods that use induction furnaces. It would have been obvious to use induction furnaces for their respective

improvements. The 09/522,220 favors using flames. It would have been obvious to use induction furnaces rather than flames, so as to avoid having to deal with the gaseous by-products of the flames, and so that one does not have to be concerned with dangerous flammable gases.

This is a provisional obviousness-type double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7115 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

John Hoffmann
Primary Examiner
Art Unit 1731

3-27-03

jmh
March 27, 2003